DEPARTMENT OF STATE
WASHINGTON

March 23, 1989

Excellency:

I have the honor to refer to the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, signed at Washington on December 3, 1946 as amended, (the Agreement), and to propose that the Agreement be further amended as follows:

(1) Articles I, II, III, IV(B)-(E), and V through XII shall be deleted in their entirety and shall be replaced by the articles contained in Annex A of this Note. Article IV(A) concerning user charges shall remain in force as Article IV. Article XIII concerning entry into force shall remain in force and shall be renumbered Article XV.

(2) Sections I, II, and III of the Annex to the Agreement shall be deleted in their entirety and replaced by Sections I through IV contained in Annex B of this note. Section VI shall also be deleted and replaced by Article II paragraph 3 contained in Annex A of this note. Existing Sections IV and V shall be renumbered as Sections V through VI and existing Section VII shall remain Section VII.

His Excellency

F. Rawdon Dalrymple,

Ambassador of Australia.

I have the further honor to propose that if the above proposals are acceptable to the Government of Australia, this Note and your Excellency's Note in reply shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. The provisions contained in Annex B of this note shall be effective from August 20, 1988. Upon entry into force, this agreement shall supersede the Agreement amending the Air Transport Agreement, effected by exchange of notes at Washington, August 12, 1957.

For the Secretary of State:

Enclosures:

Annexes A and B

EMBASSY OF AUSTRALIA
WASHINGTON, D. C.

23 March 1989

The Honourable James A. Baker, III,
Secretary of State,
WASHINGTON. D.C.

Your Excellency,

I have the honor to refer to Your Excellency's Note of March 23, 1989, which reads as follows:

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I have the honor to refer to the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, signed at Washington on December 3, 1946 as amended, (the Agreement), and to propose that the Agreement be further amended as follows:

(1) Articles I, II, III, IV(B)-(E), and V through XII shall be deleted in their entirety and shall be replaced by the articles contained in Annex A of this Note. Article IV(A) concerning user charges shall remain in force as Article IV. Article XIII concerning entry into force shall remain in force and shall be renumbered Article XV.

(2) Sections I, II, and III of the Annex to the Agreement shall be deleted in their entirety and replaced by Sections I through IV contained in Annex B of this Note. Section VI shall also be deleted and replaced by Article II paragraph 3 contained in Annex A of this Note. Existing Sections IV and V shall be renumbered as Sections V through VI and existing Section VII shall remain Section VII.

I have the further honor to propose that if the above proposals are acceptable to the Government of Australia, this Note and Your Excellency's Note in reply shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. The provisions contained in Annex B of this Note shall be effective from August 20, 1988. Upon entry into force, this agreement shall supersede the Agreement amending the Air Transport Agreement, effected by Exchange of Notes at Washington, August 12, 1957."

I have the honor to confirm that the foregoing proposals are acceptable to the Government of Australia and that your Note and this Note in reply shall constitute an Agreement between our two Governments which shall enter into force on today's date. The provisions contained in Annex B of your Note shall be effective from August 20, 1988. Upon entry into force, this Agreement shall supersede the Agreement amending the Air Transport Agreement, effected by Exchange of Notes at Washington, August 12, 1957.

F. R. Dalrymple.

(F. Rawdon Dalrymple)
Ambassador

ANNEX A

ARTICLE I
Definitions

For the purpose of this Agreement (including its Annex which forms an integral part of the Agreement) unless the context otherwise requires:

a. The term "territory" shall mean the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto.

b. The term "designated airline" shall mean the air transport enterprise or enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the airline designated by the first Contracting Party in accordance with Article III of this Agreement for the route specified in such notification.

c. The term "aeronautical authorities" shall be for each Contracting Party as that Contracting Party notifies.

d. The terms "airline" and "route" shall include "airlines" and "routes" respectively.

e. The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" shall have the meanings respectively assigned to them in Article 96 of the Convention.

f. The term "Convention" shall mean the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

   (i) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties; and

   (ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Parties.

g. The term "user charge" shall mean a charge made to airlines for the provision of airport, air navigation, quarantine, or aviation security, facilities, property and services.

h. The term "economic cost" shall mean the direct cost of providing facilities, property and services plus a reasonable charge for administrative overhead.

i. The term "price" means any fare, rate or charge for the carriage of passengers (and their baggage), and/or cargo (excluding mail) in air services charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge.

ARTICLE II
Rights Necessary for the Conduct of Air Services

1. Each Contracting Party grants to the other Contracting Party rights necessary for the conduct of international air services (hereinafter referred to as "the agreed services") by the designated airlines of the other Contracting Party, as follows: the rights of overflight and transit of, and stops for non-traffic purposes in, its territory and of commercial entry and departure for international traffic in passengers, cargo, and mail separately or in combination, at the points in its territory named on each of the routes specified in the appropriate Section of the Annex to this Agreement.

2. Each of the designated airlines shall have the right to use all airports, airways, and other facilities provided by the Contracting Parties on a non-discriminatory basis for use by international air services on the specified routes, having regard to airport capacity.

3. The designated airlines of each Contracting Party shall provide to the aeronautical authorities of the other Contracting Party documentation concerning the authorization extended to it to render service to, through, and from the territory of the other Contracting Party. This shall include copies of current certificates and authorizations for service on the routes which are the subject of this Agreement, and, for the future, such new certificates and authorizations as may be issued together with amendments, exemption orders, and authorized service patterns.

ARTICLE III
Inauguration of Agreed Services

1. Unless mutually arranged otherwise, the agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before:

   (a) The Contracting Party to whom the rights have been granted shall have designated an airline for the specified route; and

   (b) The Contracting Party which grants the rights shall have given the appropriate operating permission to the airline concerned which (subject to the provisions of paragraph 2 of this Article and of Article IX (Revocation or Change of Authorization)), it shall do with the least possible delay.

2. The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of international commercial air services.

ARTICLE V
Commercial Opportunities

1. The airlines of one Contracting Party may establish offices in the territory of the other Contracting Party for promotion and sale of air service.

2. The designated airline of one Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air service.

3. Each designated airline may perform its own ground-handling in the territory of the other Contracting Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety.

4. Each airline of one Contracting Party may engage in the sale of air services in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

5. The airline of one Contracting Party shall be permitted to pay for local expenses including purchases of fuel, in the territory of the other Contracting Party in local currency. At its discretion, the airline of one Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies according to local currency regulation.

6. Neither Contracting Party shall impose on the other Contracting Party's designated airline any requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

ARTICLE VI
Customs Duties and Taxes

1. Subject to paragraph 2 of this Article, aircraft of the designated airline of one Contracting Party operating on the agreed services, as well as fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft in the territory of the second Contracting Party by or on behalf of the designated airline of the other Contracting Party and intended solely for use by the aircraft or during the operation of the agreed services of such airline, shall be accorded with respect to customs duties, inspection fees, or other charges imposed in the territory of the second Contracting Party treatment not less favorable than that granted to national airlines engaged in international air transport or the airlines of the most favored nation.

2. Aircraft of the designated airline of one Contracting Party operating on the agreed services on a flight to, from, or across the territory of the other Contracting Party shall be admitted temporarily free from customs duties, subject otherwise to the customs regulations of such other Contracting Party. Supplies of fuel, lubricating oils, spare parts, regular equipment, and aircraft stores retained on board aircraft of the designated airline of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees, or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

3. The exemptions provided for by this Article shall also be available where the designated airline of one Contracting Party has contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph 2 of this Article.

ARTICLE VII
Safety

1. Each Contracting Party shall recognize as valid, for the purpose of operating the air service provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Contracting Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Contracting Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Contracting Party.

2. Each Contracting Party may request consultations concerning the safety standards and requirements maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, suspend, limit, revoke or impose such appropriate conditions as it may deem necessary with respect to operating authorization or technical permission of an airline designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate action within a reasonable time.

3. When required by an emergency, a Contracting Party may, prior to consultations referred to in paragraph 2, exercise the right to withhold, suspend, limit, revoke or impose such appropriate conditions as it may deem necessary with respect to operating authorization or technical permission of an airline designated by the other Contracting Party. Any action taken in accordance with this or the previous paragraph shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.

ARTICLE VIII
Application of Law

1. The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into, sojourn in, and departure from its territory of passengers, crew, or cargo of aircraft (such as laws and regulations relating to entry, clearance, aviation security, immigration, passports, customs, quarantine, or in the case of mail, postal laws and regulations) shall be applicable to the passengers, crew, or cargo of the aircraft of the designated airline of the other Contracting Party while in the territory of the first Contracting Party.

ARTICLE IX
Revocation or Change of Authorization

1. Each Contracting Party reserves the right to withhold, suspend, limit, revoke or impose such appropriate conditions as it may deem necessary with respect to the operating authorization or technical permission of an airline designated by the other Contracting Party if it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party. Each Contracting Party also reserves the right to withhold, suspend, limit, revoke, or impose such appropriate conditions as it may deem necessary with respect to the operating authorization or technical permission of a designated airline in case of failure by the designated airline of the other Contracting Party to comply with the laws and regulations of the first Contracting Party.

2. Prior to exercising a right conferred in paragraph 1 of this Article to withhold, suspend, limit, revoke, or impose such appropriate conditions as it may deem necessary with respect to the operating authorization or technical permission issued to the designated airline of the other Contracting Party, the Contracting Party desiring to exercise such right shall give notice thereof to the other Contracting Party and simultaneously to the designated airline concerned. Such notice shall state the basis of the proposed action and shall afford opportunity to the other Contracting Party to consult in regard thereto. Any action shall become effective on the date specified in such notice (which shall not be less than one calendar month after the date on which the notice would in the ordinary course of transmission be received by the Contracting Party to whom it is addressed) unless the notice is withdrawn before such date.

So can't be unilateral - If you have a problem, you must consult

3. This Article does not limit the rights of either Contracting Party to withhold, suspend, limit, revoke or impose such appropriate conditions as it may deem necessary in accordance with the provisions of Article VII (Safety) and Annex Section VII (Security). In the event of action by one Contracting Party under this Article or Article VII or Annex Section VII, the rights of the other Contracting Party under Article XII (Settlement of Disputes) shall not be prejudiced.

ARTICLE X
Consultations

Either Contracting Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date one Contracting Party receives the request from the other unless otherwise agreed.

ARTICLE XI
Amendment of Agreement

If either of the Contracting Parties considers it desirable to amend any terms of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be through discussion or by correspondence, shall begin within a period of 60 days from the date of the request unless otherwise agreed. Any amendments so negotiated shall come into force and shall form an integral part of this Agreement when they have been confirmed by an exchange of notes through the diplomatic channel.

ARTICLE XII
Settlement of Disputes

1. Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise with respect to specific tariff filings, may be referred by agreement of the Contracting Parties for decision to some person or body. If the Contracting Parties do not so agree, the dispute may at the request of either Contracting Party be submitted to arbitration in accordance with the procedures set forth below.

2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

   (a) within 30 days after the receipt of a request for arbitration, each Contracting Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

   (b) if either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with sub-paragraph (a) of this paragraph, either Contracting Party may request the President of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as the Contracting Parties agree otherwise, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

4. Except as the Contracting Parties agree otherwise, each Contracting Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Contracting Party or at its discretion within 15 days after replies are due.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

6. The Contracting Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. Each Contracting Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal and where the national law prevents full effect being given to the decision or award, use its best efforts, consistent with that law, to do so.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the International Civil Aviation Organization in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE XIII
Termination

Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate one year after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received 14 days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE XIV
Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ANNEX B
SECTION I

Routes for the Airlines of the United States of America:

The airlines of the United States designated under this Agreement shall, in accordance with the terms of their designations, be entitled to perform scheduled international air service on the following routes:

South Pacific Route:

1. (a) From the United States (excluding Guam and the Commonwealth of the Northern Mariana Islands) via Canton Island, French Polynesia, Fiji, New Caledonia and New Zealand to Sydney, Melbourne, Darwin, Perth, Brisbane 1/, Cairns 1/ and another point 1/ to be selected by the Government of the United States and beyond to New Zealand, Southeast Asia, South Asia, Africa, Europe (including the United Kingdom) and beyond.

   (b) An additional 8 points in Australia may be served only via any one or more of the specified and/or selected gateway points in Australia set forth in sub-paragraph (a). These 8 one-stop points may be changed at any time. 1/

North Pacific Route:

2. From the United States (excluding Guam and the Commonwealth of the Northern Mariana Islands) via Canada, Japan, Southeast Asia including the Republic of the Philippines to any two points in Australia chosen from Sydney, Melbourne, Brisbane and Cairns.

Guam and the Commonwealth of the Northern Mariana Islands Route:

3. From Guam and the Commonwealth of the Northern Mariana Islands to any two points to be chosen from Sydney, Melbourne, Perth, Darwin, Brisbane, Cairns or a point to be selected by the Government of the United States.

1/ Flights serving these points may operate beyond Australia without traffic rights (blind sector only) to third countries.

SECTION II

Routes for the airlines of Australia:

The airlines of Australia designated under this Agreement shall, in accordance with the terms of their designations, be entitled to perform scheduled international air service on the following routes:

South Pacific Route:

1. (a) From Australia via New Zealand, New Caledonia, Fiji, American Samoa 1/, Canton Island, French Polynesia and Canada to Honolulu, San Francisco, Los Angeles 2/, New York and three points 3/ to be selected by the Government of Australia and beyond to Canada, the United Kingdom and Europe and beyond.

   (b) An additional 8 points in the United States may be served only via one or more of the specified and/or selected gateway points in the United States set forth in sub-paragraph (a). These 8 one-stop points may be changed at any time. 3/

North Pacific Route:

2. From Australia via any one point in Asia (including Hong Kong, Japan, Korea and Taipei and may be changed from time to time) to any two points in the United States to be chosen from Honolulu, Los Angeles, San Francisco and New York. 4/

Guam and the Commonwealth of the Northern Mariana Islands Route:

3. From Australia to Guam and the Commonwealth of the Northern Mariana Islands and beyond to any two points to be chosen from Tokyo, Nagoya, Fukuoka, Seoul, Taipei, Beijing and one additional point to be specified. The beyond points may be changed from time to time.

1/ May be served as an intermediate or a turnaround point.

2/ Unless operated via San Francisco and New York, services beyond Los Angeles to the United Kingdom and Europe and beyond may be operated as follows:

From September, 1991, to Europe and beyond but not to the United Kingdom

From September, 1992, to Europe and beyond and up to four flights per week to the United Kingdom and beyond

From September, 1993, to the United Kingdom and Europe and beyond.

3/ Flights serving these points may operate beyond the United States without traffic rights (blind sector only) to third countries.

4/ Services by the designated airline(s) of Australia may begin at such time as the two Contracting Parties mutually determine, which in any event, shall be no later than the time when the designated airlines of the United States are operating a total of 8 weekly frequencies on the United States' North Pacific route.

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SECTION III

Notes to the Routes:

1. Services on the agreed routes shall either commence or terminate in the designated airline's homeland territory.

2. The designated airline(s) of each Contracting Party may, on any or all flights and at their option, without loss of any right to carry traffic otherwise permissible under this Agreement:

   (a) operate flights in either or both directions;

   (b) combine different flight numbers within one aircraft operation;

   (c) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;

   (d) omit points; and,

   (e) serve any two or more (co-terminalize) points on one flight.

3. On any segment or segments of the routes above, each designated airline may perform international air service without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the service beyond such point is a continuation of the service from the territory of the Contracting Party that has designated the airline and, in the inbound direction, the service to the territory of the Contracting Party that has designated the airline is a continuation of the service behind such point, and provided that such changes are in conformance with the capacity authorized.

4. In operating or holding out the authorized services on the agreed routes, a designated airline of one Contracting Party, which holds appropriate authority to provide such service, may enter into cooperative marketing arrangements with an airline of the other Contracting Party, provided that the arrangement does not include cabotage or revenue pooling. Each Contracting Party shall authorize such arrangements, on the basis of reciprocity, to the extent that it would authorize such arrangements if the carrier of the other Contracting Party were a carrier of its own nationality, and may require conformance with consumer disclosure rules specified in domestic law. Neither

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Contracting Party shall withhold approval for such an arrangement solely among carriers of the Contracting Parties. Due regard shall be given by the aeronautical authorities of each Contracting Party to the confidentiality of proprietary information in any filing requirements.

SECTION IV

It is agreed between the Contracting Parties:

1. That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rate consistent with sound economic principles, and desire to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and insuring as well the many indirect benefits of this form of transportation to the common welfare of both countries.

2. The designated airlines of the two Contracting Parties operating on the routes described in this Annex shall enjoy fair and equal opportunity for the operation of the agreed services. If the designated airline of one Contracting Party is temporarily unable, as a result of armed conflict or for reasons within the control of the other Contracting Party, to take advantage of such opportunity the Contracting Parties shall review the situation with the object of assisting the said airline to take full advantage of the fair and equal opportunity to participate in the agreed services.

3. That in the operation by the designated airline of either Contracting Party of the trunk services described in the present Annex, the interests of any airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route.

4. That the total air transport services offered by the designated airlines of the two Contracting Parties over the routes specified in this Annex shall bear a close relationship to the requirements of the public for such services.

5. That the services provided by each designated airline under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country which designates such airline and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the route specified in the Annex to this Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

(a) to traffic requirements between the country of origin and the countries of destination;

(b) to the requirements of through airline operation; and

(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

6. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airline of the other Contracting Party to compete in the international air services covered by this Agreement.

CITE
Use this
against
Australia

EMBASSY OF AUSTRALIA
WASHINGTON, D.

23 March 1989

The Honourable James A. Baker, III,
Secretary of State,
WASHINGTON. D.C.

Your Excellency,

I have the honor to refer to Your Excellency's Note of March 23, 1989, which reads as follows:

"Excellency:

I have the honor to refer to recent consultations between our two Governments relating to capacity on the agreed routes contained in the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, signed at Washington on December 3, 1946, as amended subsequently, including by an Exchange of Notes of today's date.

I have the further honor to propose that the provisions of the attached Annexes shall govern capacity by the designated airlines of each Contracting Party on the agreed routes from August 20, 1988. Annex A contains provisions on capacity on South Pacific routes. Annex B contains provisions on capacity on North Pacific routes. Annex C contains provisions on capacity on the Guam/Northern Marianas route. Annex D contains agreed

(c) The supplementary services (extra sections) referred to in sub-paragraph (a) (ii) of this paragraph are flights operated in conjunction with a previously authorized schedule of the designated airline proposing to operate the supplementary service in order to relieve peak demand for capacity between the United States and Australia caused by seasonal pressures or special events. Such supplementary services may not be operated for a period longer than 4 consecutive months and are not intended to circumvent the provisions of this Memorandum. Supplementary services will not be included in base capacity but passengers on such services, except for the purpose of calculating load factors under paragraphs 6(a)(iii) and 6(b) of this Memorandum, will be included in base traffic for the purposes of the calculations of permissible capacity increases pursuant to this Memorandum. Applications for services meeting the standards of this sub-paragraph may be filed on short notice.

3. (a) If the Contracting Party receiving a filing for a capacity increase believes that operation of the level of additional capacity would be inconsistent with Section III of the Annex to the Agreement, that Contracting Party, not later than 45 days prior to the date it is proposed that the capacity increase would become effective, may object in writing to the other Contracting Party. The objection will be based on specific concerns related to the capacity principles set out in that Section. Within 15 days of receipt of an objection, the Contracting Party receiving that objection will notify the other Contracting Party of whether the filing will be modified or withdrawn in the light of the concerns expressed in the objection. Within this period of 15 days either Contracting Party may then request consultations concerning the filing. Should consultations be requested, the Contracting Parties will conclude the consultations within 25 days of the receipt of the request, unless otherwise agreed. Consultations may be conducted through diplomatic channels.

(b) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity greater than that guaranteed under paragraph 4(a) of this Memorandum, or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing may disapprove that portion that is in excess of the guarantees, or would not be allowed under paragraph 5 of this Memorandum.

(c) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity for which there is an entitlement under paragraph 6(a) of this Memorandum, the Contracting Party receiving the filing will approve that increase promptly thereafter. If neither Contracting Party requests consultations on this filing, the Contracting Party receiving the filing will approve it promptly.

(d) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity under paragraph 4 (a) of this Memorandum, or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing will not disapprove that increase except as provided in paragraph 5 of this Memorandum.

(e) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity greater than that guaranteed under paragraph 6 (a) of this Memorandum, or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing may disapprove that portion that is in excess of the guarantee.

4. (a) Except as provided in paragraph 5 of this Memorandum, any designated airline will be entitled, during any 12-month period commencing at the option of the airline on either March 1 or September 1, to increase its capacity, measured in aircraft seats it is operating at the time of the filing, by the greatest of:

(i) 2 additional B-747 equivalent roundtrip services per week or their equivalent on route one; 1/ or

(ii) that airline's percentage growth in revenue passenger traffic between the United States and Australia on route 1 during the most recent 12-month period for which statistics are available 2/; or

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1/ In the event that a mix of aircraft is sought to be operated under this provision the following coefficients shall apply: B-747=1; B-747SP, DC-10 or L-1011=0.75; B-767 or DC-8=0.5.

2/ Unless otherwise agreed between the Contracting Parties, paragraph 4 (a) (ii) will not apply to a newly designated airline (which is not a replacement for another airline on this route) until 4 years of continuous service by the airline filing for the increase have elapsed.

(iii) the total percentage growth in revenue passenger traffic between the United States and Australia on route 1 during the most recent 12-month period for which statistics are available.

At the option of the airline the capacity entitlements may be exercised within the 18 month period following the effective date of the entitlement, chosen pursuant to paragraph 4 (a) above, by means of a single capacity increase, or through a combination of two or more capacity increases, provided that the capacity entitlement determined under this paragraph will be calculated only once in any year. Where the capacity entitlement referred to above results in a residue of seats upon conversion into weekly frequencies, the airline may operate an additional weekly frequency provided such residue is 50 percent or more of the seat capacity of the aircraft which will be operated.

(b) The data source used to determine specific airline growth under sub-paragraph (a) (ii) of this paragraph shall be the statistics reported by that airline to its Government. The data source used to determine total traffic growth between the United States and Australia under sub-paragraph (a) (iii) of this paragraph shall be the sum of the statistics reported by all designated airlines to their respective Governments.

(c) Percentage growth in revenue passenger traffic referred to in sub-paragraphs (a) (ii) and (iii) of this paragraph will be calculated on the basis of the growth in the on-flight United States-Australia uplift/discharge (origin/destination) passenger traffic carried on route 1 over the most recent 12 months period for which statistics are available. On-flight United States- Australia uplift/discharge (origin/destination) passenger traffic will mean revenue passengers uplifted in the territory of one Contracting Party and discharged on the same flight at a point in the territory of the other Contracting Party.

5. (a) With respect to capacity increases filed under this Memorandum, if the receiving Contracting Party concludes that the proposed capacity would be inconsistent with Section III of the Annex to the Agreement, that Party may disapprove such filing provided:

(i) the proposed capacity would result in the designated airlines of the other Contracting Party operating 62.5% or more of the capacity offered by United States and Australian airlines in the United States-Australia market on route 1; and

(ii) the revenue passenger traffic of the designated airlines of the receiving Contracting Party has not increased by 6% or more on route 1 over the most recent twelve month period for which statistics are available.

(b) The revenue passenger traffic referred to in sub-paragraph (a) (ii) of this paragraph will be calculated pursuant to the definition provided in paragraph 4(c) of this Memorandum.

(c) Only such portion of the filing which exceeds the 62.5% criterion of sub-paragraph (a)(i) of this paragraph may be disapproved.

6. (a) Notwithstanding any other provision of this Memorandum, each designated airline, provided it has fully used its entitlements granted under other paragraphs of this Memorandum, will be entitled to:

(i) operate a minimum of 4 round trip frequencies per week between the United States and Australia on route 1, without limitation as to aircraft type;

(ii) operate any level of capacity that had been operated by that airline on route 1 at any time within the most recent 18 months; and

(iii) operate a level of capacity necessary to reduce its average load factor to 70% on its regularly scheduled services on route 1 provided that an average of 55% or more of the revenue passenger traffic onboard is U.S. - Australia uplift/discharge (origin/destination) passenger traffic.

(b) The operation of a level of capacity necessary to reduce an airline's load factor to 70% on its regularly scheduled services referred to in sub-paragraph (a)(iii) of this paragraph shall be calculated on the basis of statistics reported by that airline to its Government, with such statistics reflecting: (1) All revenue passenger traffic, irrespective of point of uplift/discharge (origin/destination) on route 1, and,(2) U.S.- Australia uplift/discharge (origin/destination) revenue passenger traffic carried into and from the territory of the other Contracting Party on route 1 during the most recent 12 month period for which statistics are available. Where the calculation of such capacity results in a residue of seats upon conversion into weekly frequencies, the airline may operate an additional weekly frequency provided such residue is 50 percent or more of the seat capacity of the aircraft to be operated.

7. Each Contracting Party shall have the right to designate one additional airline on route 1 during the three years from the effective date of this Memorandum. This airline shall have the right to operate a minimum of four roundtrip frequencies per week between the United States and Australia, without limitation as to aircraft type.

8. If under the application of paragraph 5 of this Memorandum a circumstance arises that the capacity increase proposals of all the airlines of one Contracting Party cannot be fully approved under the entitlements of paragraph 4 (a) of this Memorandum, the available capacity shall be allocated by that Contracting Party equally among the airlines proposing the increases, provided that the Contracting Party performing such allocation shall retain the right to allocate on other than an equal basis in individual cases, and provided further that, following any allocation, notification shall be provided to the other Contracting Party.

9. (a) Subject to sub-paragraph (b) of this paragraph, and provided that the Agreement remains in effect, this Memorandum will enter into effect on August 20, 1988 and will remain in effect for three years, and thereafter will remain in effect unless either Contracting Party notifies the other in writing of its intention to terminate this Memorandum on a date it specifies.

(b) At any time after three years from the date of commencement of this Memorandum, either Party may request consultations, which will be held within 60 days from the date of the request, to amend the Memorandum. Unless mutually arranged otherwise, if at the conclusion of such consultations, agreement cannot be reached on amendments proposed by either Party, this Memorandum will terminate one month from the date of conclusion of the consultations.

(c) The arrangements in sub-paragraph (b) of this paragraph will not preclude either Party from seeking amendments to this Memorandum within three years from the date of its commencement.

ANNEX B

MEMORANDUM OF UNDERSTANDING
UNITED STATES - AUSTRALIA
NORTH PACIFIC ROUTE 2 CAPACITY

The two delegations confirmed their unders anding that services by the designated airlines on the agreed routes will be operated in accordance with the principles set forth in Section III of the Annex to the 1946 Agreement.

The two delegations acknowledged in that connection that two elements of the capacity principles set forth in Section III were particularly important in the context of designated airline operations over the North Pacific route:

(i) that the interests of any airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route; and

(ii) that the primary purpose of such service is the carriage of traffic originating in or destined for the designated airline's own territory.

The Contracting Parties therefore agreed that for services of the designated airlines operating on United States route 2 and Australian route 2 the following will apply:

1. (a) A designated airline of a Contracting Party proposing to increase capacity will file with the other Contracting Party a schedule for the North Pacific route reflecting the increase, specifying whether the increase invokes paragraph 4 (a) or 6 (a) of this Memorandum, or specifying that the increase is greater than that provided in those paragraphs. This filing will be made at least 60 days prior to the effective date of the capacity increases, unless the receiving Contracting Party permits a shorter time.

(b) A Contracting Party receiving a schedule filing will, no later than 45 days in advance of the effective date of the schedule, take whatever steps are required to inform the designated airline of approval, objection or disapproval of the capacity increases, as appropriate, under the terms of this Memorandum.

2. (a) For the purposes of this Memorandum, the following will not be regarded as involving an increase in capacity:

(i) changes in aircraft seating configurations; or

(ii) supplementary services (extra sections).

(b) Changes in aircraft seating configurations may be introduced upon the filing of a notice by the designated airline with the other Contracting Party.

(c) The supplementary services (extra sections) referred to in sub-paragraph (a) (ii) of this paragraph are flights operated in conjunction with a previously authorized schedule of the designated airline proposing to operate the supplementary service in order to relieve peak demand for capacity between the United States and Australia caused by seasonal pressures or special events. Such supplementary services may not be operated for a period longer than 4 consecutive months and are not intended to circumvent the provisions of this Memorandum. Supplementary services will not be included in base capacity but passengers on such services, except for the purpose of calculating load factors under paragraphs 6(a)(iii) and 6(b) of this Memorandum, will be included in base traffic for the purposes of the calculations of permissible capacity increases pursuant to this Memorandum. Applications for services meeting the standards of this sub-paragraph may be filed on short notice.

3. (a) If the Contracting Party receiving a filing for a capacity increase believes that operation of the level of additional capacity would be inconsistent with Section III of the Annex to the Agreement, that Contracting Party, not later than 45 days prior to the date it is proposed that the capacity increase would become effective, may object in writing to the other Contracting Party. The objection will be based on specific concerns related to the capacity principles set out in that Section. Within 15 days of receipt of an objection, the Contracting Party receiving that objection will notify the other Contracting Party of whether the filing will be modified or withdrawn in the light of the concerns expressed in the objection. Within this period of 15 days either Contracting Party may request consultations concerning the filing. Should consultations be requested, the Contracting Parties will conclude the consultations within 25 days of the receipt of the request, unless otherwise agreed. Consultations may be conducted through diplomatic channels.

(b) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity greater than that guaranteed under paragraph 4 (a) of this Memorandum, or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing may disapprove that portion that is in excess of the guarantees, or would not be allowed under paragraph 5 of this Memorandum.

(c) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity for which there is an entitlement under paragraph 6(a) of this Memorandum, the Contracting Party receiving the filing will approve that increase promptly thereafter. If neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing will approve it promptly.

(d) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity under paragraph 4(a) of this Memorandum or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing will not disapprove that increase except as provided in paragraph 5 of this Memorandum.

(e) If consultations are held pursuant to this paragraph and the Contracting Parties fail to reach agreement concerning an increase in capacity greater than that guaranteed under paragraph 6 (a) of this Memorandum or if neither Contracting Party requests consultations on the filing in question, the Contracting Party receiving the filing may disapprove that portion that is in excess of the guarantee.

4. (a) Except as provided in paragraph 5 of this Memorandum, any designated airline will be entitled, during any 12-month period commencing at the option of the airline on either March 1 or September 1, to increase its capacity, measured in aircraft seats it is operating at the time of the filing, by the greatest of:

(i) one additional B-747 roundtrip service per week or its equivalent on route two 1/; or,

(ii) that airline's percentage growth in revenue passenger traffic between the United States and Australia on route 2 during the most recent 12-month period for which statistics are available; or

(iii) the total percentage growth in revenue passenger traffic between the United States and Australia on route 2 during the most recent 12-month period for which statistics are available.

1/ In the event that a mix of aircraft is sought to be operated under this provision the following coefficients shall apply: B-747=1; B-747SP, DC-10 or L-1011=0.75; B-767 or DC-8=0.5.

(b) Unless otherwise agreed between the Contracting Parties, paragraphs 4(a)(ii) and 4(a)(iii) will not apply to a designated airline (which is not a replacement for another airline on this route) which commences operations on route 2 until four (4) years of continuous service by the airline filing for the increase have elapsed.

(c) After services have commenced by a designated airline of one Contracting Party and when a designated airline of the other Contracting Party commences services the growth entitlements for designated carriers of the first Contracting Party under sub-paragraphs (a)(ii) and (a)(iii) of this paragraph will apply if:

(i) the airline seeking the increase in capacity has operated over the preceding 12 months at an average revenue passenger seat factor of 70% or more based on the total traffic on board into/ex Australia; and

(ii) not less than 55% of passenger traffic carried over the preceding 12 months by the airline seeking the increase was Australia-USA v.v. uplift/discharge (origin/ destination) traffic.

(d) At the option of the airline the capacity entitlements may be exercised within the 18 month period following the effective date of the entitlement chosen pursuant to paragraph 4(a) above by means of a single capacity increase, or through a combination of two or more capacity increases, provided that the capacity entitlement determined under this paragraph will be calculated only once in any year. Where the capacity entitlement referred to above results in a residue of seats upon conversion into weekly frequencies, the airline may operate an additional weekly frequency provided such residue is 50 percent or more of the seat capacity of the aircraft which will be operated.

(e) The data source used to determine specific airline growth under sub-paragraph (a)(ii) of this paragraph shall be the statistics reported by that airline to its Government. The data source used to determine total traffic growth between the United States and Australia under sub-paragraph (a) (iii) of this paragraph shall be the sum of the statistics reported by all designated airlines to their respective Governments.

(f) Percentage growth in revenue passenger traffic referred to in sub-paragraphs (a)(ii) and (a)(iii) of this paragraph will be calculated on the basis of the growth in the on-flight United States-Australia uplift/discharge (origin/destination) passenger traffic carried on route 2 over the most recent 12 months period for which statistics are available. On-flight

United States-Australia uplift/discharge (origin/destination) passenger traffic will mean revenue passengers uplifted in the territory of one Contracting Party and discharged on the same flight at a point in the territory of the other Contracting Party.

5. (a) With respect to capacity increases filed under this Memorandum, if the receiving Contracting Party concludes that the proposed capacity would be inconsistent with Section III of the Annex to the Agreement, that Party may disapprove such filing provided:

(i) the proposed capacity would result in the designated airlines of the other Contracting Party operating 62.5% or more of the capacity offered by United States and Australian airlines in the United States-Australia market on route 2; and

(ii) the revenue passenger traffic of the designated airlines of the receiving Contracting Party has not increased by 6% or more on route 2 over the most recent twelve month period for which statistics are available.

(b) The revenue passenger traffic referred to in sub-paragraph (a)(ii) of this paragraph will be calculated pursuant to the definition provided in paragraph 4(f) of this Memorandum.

(c) Only such portion of the filing which exceeds the 62.5% criterion of sub-paragraph (a)(i) of this paragraph may be disapproved.

6. (a) Notwithstanding any other provision of this Memorandum, each designated airline provided it has fully used its entitlements granted under other paragraphs of this Memorandum will be entitled to:

(i) operate any level of capacity that had been operated by that airline on route 2 at any time within the most recent 18 months;

(ii) operate a level of capacity necessary to reduce its average load factor to 70% on its regularly scheduled services on route 2 provided that an average of 55% or more of the revenue passenger traffic onboard is U.S.-Australia uplift/discharge (origin/destination) passenger traffic.

(b) The operation of a level of capacity necessary to reduce an airline's load factor to 70% on its regularly scheduled

services referred to in sub-paragraph (a)(ii) of this paragraph shall be calculated on the basis of statistics reported by that airline to its Government, with such statistics reflecting: (1) All revenue passenger traffic, irrespective of point of uplift/discharge (origin/destination) on route 2, and,(2) U.S.-Australia uplift/discharge (origin/destination) revenue passenger traffic carried into and from the territory of the other Contracting Party on route 2 during the most recent 12 month period for which statistics are available. Where the calculation of such capacity results in a residue of seats upon conversion into weekly frequencies, the airline may operate an additional weekly frequency provided such residue is 50 percent or more of the seat capacity of the aircraft to be operated.

7. If under the application of paragraph 5 of this Memorandum a circumstance arises that the capacity increase proposals of all the airlines of one Contracting Party cannot be fully approved under the entitlements of paragraph 4(a) of this Memorandum, the available capacity shall be allocated by that Contracting Party equally among the airlines proposing the increases, provided that the Contracting Party performing such allocation shall retain the right to allocate on other than an equal basis in individual cases, and provided further that, following any allocation, notification shall be provided to the other Contracting Party.

8. (a) Subject to sub-paragraph (b) of this paragraph, and provided that the Agreement remains in effect, this Memorandum will enter into effect on August 20, 1988 and will remain in effect for three years, and thereafter will remain in effect unless either Contracting Party notifies the other in writing of its intention to terminate this Memorandum on a date it specifies.

(b) At any time after three years from the date of commencement of this Memorandum, either Party may request consultations, which will be held within 60 days from the date of the request, to amend the Memorandum. Unless mutually arranged otherwise, if at the conclusion of such consultations, agreement cannot be reached on amendments proposed by either Party, this Memorandum will terminate one month from the date of conclusion of the consultations.

(c) The arrangements in sub-paragraph (b) of this paragraph will not preclude either Party from seeking amendments to this Memorandum within three years from the date of its commencement.

ANNEX C

MEMORANDUM OF UNDERSTANDING ON GUAM AND
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ROUTE

The two delegations confirmed their understandings that services by the designated airlines on the agreed route will be operated in accordance with the principles set forth in Section III of the Annex to the 1946 Agreement.

Each of the Contracting Parties may designate an airline or airlines to operate over Route 3 with four (4) DC-10 round trip frequencies or their equivalent per week. Three (3) frequencies may be offered commencing on April 1, 1989, and one (1) additional DC-10 or equivalent round trip frequency for each of the Contracting Parties may be offered commencing April 1, 1990. The capacity mechanism outlined below will not apply for two years from April 1, 1989. (i.e. 1989 3 services, 1990 4 services, 1991 4 services, 1992 additional service if conditions of capacity mechanism are met).

Further increases in capacity, beyond the entitlement of four frequencies, will be guaranteed on the basis of one additional DC-10 equivalent round trip service weekly for each Contracting Party each year provided:

(a) an airline seeking an increase in capacity has operated in its own right, over the preceding 12 months at an average revenue passenger seat factor of 67.5% or more; and 70% or more when the total number of services on the route reaches 7 per week, based on:

-- for US airlines, total traffic on board into/ ex Australia on Route 3

-- for Australian airlines, total traffic on board between Australia and Guam/Northern Mariana Islands on Route 3; and

(b) no less than 55% of passenger traffic carried between Australia and Guam/Northern Mariana Islands over the most recent 12 months by the airline seeking the increase was Australia-Guam/Northern Mariana Islands uplift/discharge (origin/ destination) traffic.

With respect to this Memorandum of Understanding, Australia-Guam/Northern Mariana Islands uplift/discharge (origin/destination) traffic will include all passenger traffic carried between Australia and Guam/Northern Mariana Islands, except traffic carried on the same or an affiliated airline between Australia and third countries which makes a stopover of less than two consecutive nights in Guam or the Northern Mariana Islands.

ANNEX D

UNDERSTANDINGS REACHED ON THE INTERPRETATION OF THE MEMORANDA OF UNDERSTANDING CONCERNING CAPACITY

1. References in the three Memoranda of Understanding to Section III of the Annex to the Air Transport Agreement between the Government of Australia and the Government of the United States of America, done at Washington on December 3, 1946, as amended, will be to Section IV of the revised Annex.

2. Airlines sometimes operate extra capacity by substituting larger for smaller aircraft. This extra capacity will be treated as supplementary services (extra sections) under paragraphs 2(c) of the South Pacific and North Pacific Memoranda of Understanding.

3. In calculating a load factor under sub-paragraphs 6(a)(iii) and 6(b) of the South Pacific Memorandum of Understanding and sub-paragraphs 4(c)(i), 6(a)(ii) and 6(b) of the North Pacific Memorandum of Understanding, services including extra capacity brought about by substituting larger for smaller aircraft will be treated as normal scheduled services irrespective of whether for other purposes the extra capacity is treated as supplementary services (extra sections).

4. Entitlements for a 12 month period referred to in sub-paragraphs 4(a) of the South Pacific and North Pacific Memoranda of Understanding will be calculated so as to be effective from either March 1 or September 1, depending on which period an airline chooses. The references to "time of the filing" in sub-paragraphs 4(a) of the South Pacific and North Pacific Memoranda of Understanding do not refer to an airline filing for additional capacity but mean either the September 1 or March 1 calculation of additional capacity entitlements.

5. A designated airline which has chosen a 12 month period referred to in sub-paragraphs 4(a) of the South Pacific and North Pacific Memoranda of Understanding beginning on either March 1 or September 1 may elect to change the period provided its next capacity entitlement is calculated 18 months after the commencement date of the period it chose previously.

6. Airlines must operate their capacity entitlement under the South Pacific and North Pacific Memoranda of Understanding within an 18 month period from the time the entitlement takes effect, or the unused portion will lapse.

7. The base capacity from which entitlements will be calculated under sub-paragraph 4(a) of the South Pacific and North Pacific Memoranda of Understanding will be that capacity which an airline is operating on either March 1 or September 1, depending on which period that airline has chosen.

8. A reference in sub-paragraph 6(a)(ii) of the South Pacific Memorandum of Understanding and sub-paragraph 6(a)(i) of the North Pacific Memorandum of Understanding to any level of capacity that had been operated by a designated airline at any time within the most recent 18 months includes only capacity operated on scheduled services and does not include supplementary services operated by that airline. This provision in no way prevents an airline from operating supplementary services in accordance with sub-paragraphs 2(c) of the South Pacific and North Pacific Memoranda of Understanding.

9. The reference in brackets in sub-paragraph 4(b) of the North Pacific Memorandum of Understanding and in footnote 2 of the South Pacific Memorandum of Understanding to a designated airline replacing another airline means that the replacement airline will inherit the status of the airline it replaces.

10. In the second paragraph of the Guam/Commonwealth of the Northern Mariana Islands Memorandum of Understanding, the frequencies referred to are the total number of frequencies that each Contracting Party may allocate among its designated airlines.

11. The services in parentheses mentioned at the end of the second paragraph of the Guam/Commonwealth of the Northern Mariana Islands Memorandum of Understanding may be introduced from April 1 of each of the years referred to.

12. The reference in the final paragraph of the Memorandum of Understanding on Guam/Commonwealth of the Northern Mariana Islands to two consecutive nights is to the time spent in Guam and/or the Northern Mariana Islands.

13. Passenger traffic statistics will be exchanged through the diplomatic channel. Thereafter, each Contracting Party will make capacity entitlement calculations available, upon request, to the designated airlines of each Contracting Party.

14. A designated airline must nominate to the aeronautical authority of the other Contracting Party whether it wishes to be a March 1 or September 1 airline under the North Pacific and South Pacific Memoranda of Understanding, respectively. A newly designated airline may nominate its chosen period once it has been operating on the route for 12 months.

15. Under both the South Pacific and North Pacific Memoranda of Understanding, if an airline of either Contracting Party fails to qualify for a capacity entitlement under sub-paragraph 4(a) due to the operation of sub-paragraph 5(a), that airline will not be entitled to any increase in capacity at that time except capacity that may be allowed under sub-paragraph 5(c), unless paragraph 6 comes into effect. After six months time, however, that airline may seek to qualify for additional capacity by changing from a September 1 to a March 1 carrier, or vice versa.

16. In the South Pacific Memorandum of Understanding, all references to U.S.-Australia uplift/discharge (origin/destination) traffic are intended to refer to the same traffic type as is mentioned in sub-paragraph 4(c). Similar references in the North Pacific Memorandum of Understanding are intended to refer to the same traffic type as is mentioned in sub-paragraph 4(f) of the North Pacific Memorandum of Understanding.

17. The reference in the third paragraph of the Guam/ Commonwealth of the Northern Mariana Islands Memorandum of Understanding to "70 percent or more when the total number of services on the Route reaches 7 per week" means the total number of services operated by the airlines of the Contracting Party seeking the increases.

REPRODUCED AT GOVERNMENT EXPENSE

MEMORANDUM OF UNDERSTANDING ON TARIFFS

In the course of negotiations in Washington May 12-23, 1980 the delegations of the United States and Australia agreed that the country-of-origin pricing system adopted subject to renewal in December 1978 be made permanent.

It was agreed to use the following procedures:

(1) All designated airlines will file their tariffs for one-way or roundtrip transportation originating in the United States to Australia with the competent aeronautical authorities of both countries. If such tariffs are accepted by the United States aeronautical authority, the Australian aeronautical authority will allow them to take effect subject to the procedures provided for in paragraph (3) below.

(2) All designated airlines will file tariffs for one-way or roundtrip transportation originating in Australia to the United States with the aeronautical authorities of both countries. The United States aeronautical authority will allow such tariffs approved by the Australian aeronautical authority to take effect. The Australian aeronautical authority, when necessary, will discuss such tariff propcsals individually with each designated airline and reserves the right to either:

(a) approve any tariff of charges submitted;

(b) approve any such tariff subject to such variations as directed;

(c) reject any such tariff, or reject any such tariff and direct the adoption in its stead of such tariff as is considered fair and reasonable.

Discussions of tariffs with U.S. airlines will be limited to traffic originating in Australia.

(3) If either government so desires, the United States and Australia will consult to discuss either country's tariff package. Neither Party will take adverse action on any proposed tariff until after such consultations. The provisions of the US-Australia Air Transport Service Agreement of 1946, as amended, on advance filing of tariffs and notices of dissatisfaction will remain in effect. If no agreement on tariffs is reached in consultations, neither country shall take an adverse action except with respect to proposed tariffs for one-way or round-trip transportation from its territory.

(4) Both the United States and Australia will allow individual airlines to file tariff revisions at the airlines' discretion and will liberally encourage the introduction of innovative price and quality-of-service offerings, consistent with the country-of-origin principle in paragraphs (1) to (3) above.

(5) Subject to the provisions of paragraphs (1) and (2) above both Parties will allow any designated airline of either

Party to offer the same tariff for the transportation of traffic on its services operated between Australia and the U.S. as any tariff offered by any other designated airline for the transportation of traffic between the territories of the two Parties.

Richard W. Boggsian
Chairman
United States Delegation

K. H. Toakley
Leader
Australian Delegation

Washington, D.C.

May 23, 1980

MEMORANDUM OF UNDERSTANDING ON CAPACITY

1. During consultations held in Washington May 12-23, 1980, delegations representing the Governments of Australia and the United States of America examined the capacity provisions set forth in Section III of the Annex to the United States-Australia Air Transport Agreement of December 3, 1946, as amended. The two delegations agreed that it was not the intention of either Government to condone the operation by their designated airline or airlines, over the routes specified in the Schedule to the Agreement, of capacity which is inconsistent with the provisions of Section III of the Annex to the Agreement. To minimize the possibility of the introduction of such capacity or the imposition of capacity controls inconsistent with Section III of the Annex to the Agreement the two delegations reached the following understanding.

2. Prior to the filing of any schedule that would increase capacity, the Government of the airline proposing such a change will satisfy itself that the changes proposed would not introduce capacity inconsistent with the provisions of Section III of the Annex to the Agreement. It will, thereafter, deliver to the other Government the formal filing by the airline concerned of such schedule change at least 60 days prior to its effective date unless a shorter period of time is agreed upon

by the Governments in special circumstances. Schedule changes effecting no increase in capacity shall be submitted by the interested airline directly to the aeronautical authorities of the other party at least 30 days prior to their effective date.

3. In any case where it appears to the other Government that a proposed new schedule involving an increase in capacity would be inconsistent with the provisions of Section III of the Annex to the Agreement, that Government, within 30 days of receipt of the filing, may inform the other of its objection and shall provide the specific reasons for its objection.

4. In the event that an objection is made in accordance with the above procedure, the Government delivering the filing will consider the reasons set forth in the objection and, if it deems the objection justified, will take steps to have the filing withdrawn or modified to the extent it considers appropriate. If it finds that the objection does not provide a basis for withdrawing or modifying the filing, it shall provide relevant reasons therefor.

5. Unless withdrawn, the proposed new schedule, in its original form or as modified pursuant to paragraph 4, shall go into effect on the effective date referred to in paragraph 2.

6. Consultations under the terms of Article VIII of the United States-Australia Air Transport Agreement may be invoked to review existing air services whenever one Government

believes that the services being conducted by a designated airline or airlines of the other Government are inconsistent with the provisions of Section III of the Annex to the Agreement, provided that the services in question have been in operation for six months or more. Consultations in accordance with this paragraph shall be held within 60 days of the receipt of the request.

7. In the consultations referred to in paragraph 6 the two parties shall determine whether the services which have been the subject of the consultations have been consistent with the provisions of Section III of the Annex to the Agreement. Unless the parties find that the level of capacity is consistent with the provisions of Section III of the Annex to the Agreement, they shall endeavour to agree upon a level of capacity at which the airlines involved shall operate and the period of time during which that level should be maintained. When the two parties cannot reach an agreement as a result of such consultations, however, the Government of the airline concerned shall refrain from transmitting schedules reflecting further increases for that airline between the points specified in the filing mentioned in paragraph 2 above for a period of six months from the date of effectiveness of the schedule which has been questioned, unless otherwise mutually agreed.

8. In connection with the consultations referred to in paragraph 6, both Governments shall provide information relevant to the traffic and capacity situation to be reviewed in the course of the consultations.

9. The provisions of the understanding may be terminated by either Government upon giving six months' notice to the other Government, except that no such notification shall be given for at least 30 months from the date of signing of this Memorandum of Understanding.

Richard W. Boggsian
Chairman
United States Delegation

K. H. Toakley
Leader
Australian Delegation

Washington, D.C.
May 23, 1980

MEMORANDUM OF UNDERSTA 'G ON CHARTERS

1. In the course of negotiations in Washington May 12-23, 1980, the United States Delegation proposed that Australia accept a country-of-origin charter article. The United States Delegation explained that agreement on a charter article was considered to be necessary by the United States in order to assist in the marketing of charter operations from the United States to Australia.

2. In response the Australian Delegation indicated that the proposal w: not acceptable at this time. The Australian Government has announced that a review of the Australian charter policy will take place in 1981 and that in the meantime the existing charter policy would be retained. It was therefore not possible for the Australian Delegation to preempt the outcome of that review. Furthermore, the proposal by the United States was not acceptable since it would be inconsistent with Australian domestic legislation.

3. The Australian Delegation confirmed, however, that the Australian Government will continue to approve, as in the past, with minimum administrative requirements and formalities, the operation of inclusive tour, affinity and single entity passenger and cargo charters to Australia from the United States. It will also consider favourably applications for other types of passenger charters, although with regard to these charter types more complete details of the flight would have to be submitted by the applicant.

4. Finally, the Australian Delegation emphasized that the arrangements set out above are designed to encourage, as far as is possible consistent with Australian domestic legislation, proposals by United States carriers to operate passenger charter services to Australia from the United States. Accordingly, any applications by United States carriers will be considered expeditiously.

5. Similarly, the United States Delegation agreed that the United States Government would favorably consider requests by an Australian carrier for charter services on the basis of comity and reciprocity.

Richard W. Boggsian
Chairman
United States Delegation

K.H. Toakley
Leader
Australian Delegation

Washington, D.C.

May 23, 1980

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 1574

AIR TRANSPORT SERVICES

Agreement Between the
UNITED STATES OF AMERICA
and AUSTRALIA

- Signed at Washington December 3, 1946
- Effective December 3, 1946

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

The Government of the United States of America and the Government of the Commonwealth of Australia,

Desiring to conclude an Agreement for the purpose of promoting direct air services as rapidly as possible between their respective territories,

Have accordingly appointed authorized representatives for this purpose, who have agreed as follows:-

ARTICLE I

For the purpose of this Agreement and its Annex unless the context otherwise requires:

(A) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944. [1]

(B) The term "aeronautical authorities" shall mean in the case of Australia the Director-General of Civil Aviation, and in the case of the United States the Civil Aeronautics Board, and in both cases any person or body authorized by the respective Contracting Parties to perform the functions presently exercised by the above-mentioned authorities.

(C) The term "designated airline" shall mean the air transport enterprise or enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the airline designated by the first Contracting Party in accordance with Article III of this Agreement for the route specified in such notification.

(D) The terms "airline" and "route" shall be deemed to include "airlines" and "routes" respectively.

(E) The definitions contained in paragraphs (a), (b), and (d) of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 [2] shall apply.

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[1] [*International Civil Aviation Conference, Chicago, Illinois, November 1 to December 7, 1944. Final Act and Related Documents*, p. 59, Conference Series 64, Department of State publication 2282.]

[2] [*Ibid.*, p. 86.]

(F) The term "National of Australia" shall mean

(i) The Government of Australia or a British subject who is ordinarily resident in Australia or

(ii) A partnership comprised entirely of a number of such subjects or of one or more of such subjects and the Government of Australia or

(iii) A corporation or association created or organized under the laws of Australia or of any State or Territory thereof and which is substantially owned and effectively controlled by the Government of Australia or by such subjects, or by both such Government and one or more of such subjects.

(G) The term "National of New Zealand" shall mean

(i) The Government of New Zealand or a British subject who is ordinarily resident in New Zealand or

(ii) A partnership comprised entirely of a number of such subjects or of one or more of such subjects and the Government of New Zealand or

(iii) A corporation or association created or organized under the laws of New Zealand or of any Territory thereof and which is substantially owned and effectively controlled by the Government of New Zealand or by such subjects or by both such Government and one or more of such subjects.

(H) The term "National of the United States" shall mean a citizen of the United States within the meaning of the Civil Aeronautics Act of 1938, [1] as amended.

ARTICLE II

Each Contracting Party grants to the other Contracting Party rights to the extent described in the Annex to this Agreement for the purpose of the establishment of the international air services set forth in that Annex, or as amended in accordance with Article XI of the present Agreement (hereinafter referred to as the "agreed services").

ARTICLE III

(A) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before:

(1) The Contracting Party to whom the rights have been granted shall have designated an airline for the specified route;

[1] [52 Stat. 973.]

(2) The Contracting Party which grants the rights shall have given the appropriate operating permission to the airline concerned which (subject to the provisions of paragraph (B) of this Article and of Article VII) it shall do with the least possible delay.

(B) The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of international commercial air services.

ARTICLE IV

(A) The charges which either of the Contracting Parties may impose or permit to be imposed on the designated airline of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(B) Subject to paragraph (C) of this Article, aircraft of the designated airline of one Contracting Party operating on the agreed services, as well as fuel, lubricating oils, and spare parts introduced into or taken on board aircraft in the territory of the second Contracting Party by or on behalf of the designated airline of the other Contracting Party and intended solely for use by the aircraft of such airline, shall be accorded with respect to customs duties, inspection fees, or other charges imposed in the territory of the second Contracting Party treatment not less favorable than that granted to national airlines engaged in international air transport or the airlines of the most favored tion.

(C) Aircraft of the designated airline of one Contracting Party operating on the agreed services on a flight to, from, or across the territory of the other Contracting Party shall be admitted temporarily free from customs duties, subject otherwise to the customs regulations of such other Contracting Party. Supplies of fuel, lubricating oils, spare parts, regular equipment, and aircraft stores retained on board aircraft of the designated airline of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees, or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

(D) Each of the designated airlines shall have the right to use all airports, airways, and other facilities provided by the Contracting Parties for use by international air services on the specified routes.

(E) Each Contracting Party shall grant equal treatment to its own designated airline and that of the other Contracting Party in the administration of its customs, immigration, quarantine, and similar regulations.

ARTICLE V

Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operation of the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flight above its own territory certificates of competency and licenses granted to its own nationals by the other Contracting Party or by another State.

ARTICLE VI

(A) The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.

(B) The laws and regulations of one Contracting Party relating to the entry into, sojourn in, and departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine) shall be applicable to the passengers, crew, or cargo of the aircraft of the designated airline of the other Contracting Party while in the territory of the first Contracting Party.

ARTICLE VII

(A) Each Contracting Party reserves the right to itself to withhold or revoke the certificate or permit of an airline designated by the other Contracting Party if it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party, or in nationals of Australia and of New Zealand with respect to an airline designated by Australia. Each Contracting Party also reserves the right to itself to withhold or revoke, or impose such appropriate conditions as it may deem necessary with respect to, any certificate or permit in case of failure by the designated airline of the other Contracting Party to comply with the laws and regulations of the first Contracting Party or in case, in the judgment of the first Contracting Party, there is failure to fulfill the conditions under which the rights are granted pursuant to this Agreement. In the event of action by one Contracting Party under

this Article the rights of the other Contracting Party under Article IX shall not be prejudiced.

(B) Prior to exercising the right conferred in paragraph (A) of this Article to withhold or revoke, or to impose conditions with respect to, any certificate or permit issued to the designated airline of the other Contracting Party, the Contracting Party desiring to exercise such right shall give notice thereof to the other Contracting Party and simultaneously to the designated airline concerned. Such notice shall state the basis of the proposed action and shall afford opportunity to the other Contracting Party to consult in regard thereto. Any revocation or imposition of conditions shall become effective on the date specified in such notice (which shall not be less than one calendar month after the date on which the notice would in the ordinary course of transmission be received by the Contracting Party to whom it is addressed) unless the notice is withdrawn before such date.

Article VIII

(A) In a spirit of close collaboration the aeronautical authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement and its Annex.

(B) In the event of the aeronautical authorities of either Contracting Party failing or ceasing to publish information in relation to the agreed services on lines similar to that included in the Airline Traffic Surveys (Station to Station and Origination and Destination) now published by the Civil Aeronautics Board and failing or ceasing to supply such data of this character as may be required by the Provisional International Civil Aviation Organization or its successor, the aeronautical authorities of such Contracting Party shall supply, on the request of the aeronautical authorities of the other Contracting Party, such information of that nature as may be requested.

Article IX

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization (in accordance with the provisions of Article III, Section 6(8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944) [1] or its successor, and the

[1] [Executive Agreement Series 469.]

executive authorities of each Contracting Party will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

ARTICLE X

This Agreement and all relative contracts shall be registered by both Contracting Parties with the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago December 7, 1944 or its successor.

ARTICLE XI

(A) If a general multilateral air transport convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement or its Annex which may be desirable in the light of experience.

(C) If either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties, and such consultation shall begin within a period of sixty days from the date of the request. When these authorities agree on modifications to the Annex, these modifications will come into effect when they have been confirmed by the Contracting Parties by an exchange of notes through the diplomatic channel.

ARTICLE XII

It shall be open to either Contracting Party at any time to give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organization or its successor. If such notice is given, this Agreement shall terminate twelve calendar months after the date of receipt of the notice by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment by the other Contracting Party specifying an earlier date of receipt, notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organization or its successor.

ARTICLE XIII

This Agreement, including the provisions of the Annex thereof, will come into force on the day it is signed.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at Washington, this third day of December, 1946.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

DEAN ACHESON

FOR THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA:

NORMAN J. O. MAKIN

EDGAR C JOHNSTON

ANNEX

SECTION I

The airline of the United States of America designated pursuant to the present Agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of Australia, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Sydney, on the following route:

> The United States via Honolulu, Canton Island, the Fiji Islands, New Caledonia (optional), to Sydney; in both directions.

It is agreed that, if and so long as the airport at Melbourne is used as a terminal of an international air service operated by an airline other than the designated airline of the United States of America, the designated airline of the United States of America may proceed beyond Sydney to Melbourne and may in addition enjoy at Melbourne the rights conveyed herein in respect to Sydney.

SECTION II

The airline of Australia designated pursuant to the present Agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of the United States of America, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Honolulu and San Francisco, on the following route:

> Australia via New Caledonia (optional), the Fiji Islands, Canton Island, Honolulu, to San Francisco, and (optional) beyond to Vancouver; in both directions.

SECTION III

It is agreed between the Contracting Parties:

(A) That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles, and desire to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and insuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries.

(B) The designated airlines of the two Contracting Parties operating on the routes described in this Annex shall enjoy fair and equal opportunity for the operation of the agreed services. If the designated airline of one Contracting Party is temporarily unable,

as a result of the war or for reasons within the control of the other Contracting Party, to take advantage of such opportunity, the Contracting Parties shall review the situation with the object of assisting the said airline to take full advantage of the fair and equal opportunity to participate in the agreed services.

(C) That in the operation by the designated airline of either Contracting Party of the trunk services described in the present Annex, the interests of any airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route.

(D) That the total air transport services offered by the designated airlines of the two Contracting Parties over the routes specified in this Annex shall bear a close relationship to the requirements of the public for such services.

(E) That the services provided by each designated airline under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country which designates such airline and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the route specified in the Annex to this Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

(a) to traffic requirements between the country of origin and the countries of destination;
(b) to the requirements of through airline operation; and
(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION IV

(A) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airline, as well as the characteristics of each service.

(B) The rates to be charged by the designated airline of either Contracting Party between points in the territory of the United States and points in Australian territory referred to in this Annex, shall, consistent with the provisions of the present Agreement and its Annex,

be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under the present Agreement and its Annex, within their respective constitutional powers and obligations.

(C) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called "IATA"), for a period of one year beginning in February 1946, any rate agreements concluded through this machinery during this period and involving any United States airline will be subject to approval by the Board.

(D) Any new rate proposed by the designated airline of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

(E) The Contracting Parties agree that the procedure described in paragraphs (F), (G), and (H) of this section shall apply

(1) if, during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

(2) at any time no IATA machinery is applicable, or

(3) if either Contracting Party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference machinery relevant to this provision.

(F) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by its designated airline for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if in the judgment of the aeronautical authorities of the Contracting Party whose designated airline is proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (D) above is dissatisfied with

the new rate proposed by the designated airline of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will exercise its statutory powers to give effect to such agreement.

If agreement has not been reached at the end of the thirty-day period referred to in paragraph (D) above, the proposed rate may, unless the aeronautical authorities of the country of the airline concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (H) below.

(G) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the designated airline of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty-day period referred to in paragraph (D) above, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its designated airline.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(H) When in any case under paragraphs (F) and (G) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the designated airline of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization or its successor for an advisory report, and the executive authorities of each Contracting Party will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

(I) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the

aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

(J) In this Annex references to rates between a point in the territory of one Contracting Party and a point in the territory of the other Contracting Party shall be deemed to include round-trip rates for a journey from the territory of the first mentioned Contracting Party to the territory of the second mentioned Contracting Party and back to the territory of the first mentioned Contracting Party.

SECTION V

It is recognized that the determination of rates to be charged by an airline of one Contracting Party over a segment of the specified route, which segment lies between the territories of the other Contracting Party and a third country, is a complex question the overall solution of which cannot be sought through consultation between only the two Contracting Parties. Pending the acceptance by both Contracting Parties of any multilateral agreement or recommendations with respect to such rates, the rates to be charged by the designated airlines of the two Contracting Parties over the route segment involved shall be set in the first instance by agreement between such airlines operating over such route segment, subject to the approval of the aeronautical authorities of the two Contracting Parties. In case such designated airlines can not reach agreement or in case the aeronautical authorities of both Contracting Parties do not approve any rates set by such airlines, the question shall become the subject of consultation between the aeronautical authorities of the two Contracting Parties. In considering such rates the aeronautical authorities shall have regard particularly to subparagraph (C) of Section III of this Annex and to the desire of both Contracting Parties to foster and encourage the development of efficient and economically sound trunk air services by the designated airlines over the specified routes and the development of efficient and economically sound regional air services along and in areas adjacent to the specified routes. If the aeronautical authorities can not reach agreement the matter shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization or its successor, and the executive authorities of each Contracting Party shall use their best efforts under the powers available to them to put into

effect the opinion expressed in such report. Pending determination of the rates in the manner herein provided, the rates to be charged over the particular route segment or segments involved shall be as fixed by the aeronautical authorities of the Contracting Party whose territory is on the segment or segments involved, provided that no discrimination is made between the rates to be charged by the designated airlines of the two Contracting Parties. After any rate has been agreed to in accordance with the procedure described in this Section, such rate shall remain in effect until changed in accordance with this procedure.

SECTION VI

After the present Agreement comes into force the aeronautical authorities of both Contracting Parties will exchange information as promptly as possible concerning the authorizations extended to their respective designated airline to render service to, through, and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for service on the routes which are the subject of this Agreement and, for the future, such new certificates and authorizations as may be issued together with amendments, exemption orders, and authorized service patterns.